

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Vasconcellos Analyst: Marion Mann DeJong Bill Number: SB 1310

Related Bills: _____ Telephone: 845-6979 Amended Date: APTBA

Attorney: Patrick Kusiak Attorney
Sponsor: General

SUBJECT: FTB Collection Of State Or County Warrants/Outstanding Warrant Reduction Act

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.

☒ FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED _____ STILL APPLIES.

☒ OTHER - See comments below.

SUMMARY OF BILL

As proposed to be amended, this bill would create the Outstanding Warrant Reduction Act to reduce the number of arrest warrants for persons wanted for commissions of crimes in California. This would be accomplished by appropriating \$10 million to expand local law enforcement efforts to resolve felony warrants and by creating an amnesty program for infraction or misdemeanor warrants that can be resolved by payment.

For infraction or misdemeanor warrants, if a person fails to pay during the amnesty period, this bill would allow state agencies and the courts to refuse to issue various state-issued licenses. This bill would change the priority of debts for purposes of attaching a person's earnings and intercepting state refunds and lottery winnings. In addition, this bill would modify the law regarding court-ordered debts that are referred to the Franchise Tax Board (FTB) for collection.

SUMMARY OF AMENDMENT

The August 16, 1999, amendments deleted the provisions of the bill as introduced (relating to prisons) and added the Outstanding Warrant Amnesty Program.

The proposed amendments would revise the Outstanding Warrant Amnesty Program.

EFFECTIVE DATE

This bill would become effective January 1, 2000. The amnesty period would be from January 1, 2000, to June 30, 2001. Refund intercept and collection referrals would begin after the amnesty period. This bill would remain operative

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director

Date

Gerald Goldberg

10/13/1999

until December 31, 2004, and would be repealed unless a later enacted statute extends or deletes the repeal date.

BACKGROUND

The department received proposed amendments to the August 16, 1999, version of SB 1310 and was asked to analyze the proposed amendments rather than the August 16, 1999, amendments.

Department staff had numerous questions and concerns regarding the proposed amendments. For example, it was unclear whether the author was attempting to modify existing systems or create new systems since the proposed amendments would add new provisions to the Government Code and the Revenue and Taxation Code that were almost identical to the current law regarding the automated offset system and court-ordered debt collections. Department staff contacted both the author's office and the sponsor to discuss the questions and concerns.

The author and sponsor confirmed that the debts that would be referred under this bill are the same as those referred under the current automated offset system and court-ordered debt collection. They simply intended to modify the existing systems. The author indicated that due to concerns regarding the proposed amendments, the bill would become a "two-year bill" to provide time to resolve all concerns.

LEGISLATIVE HISTORY

AB 3343 (Stats. 1994, Ch. 1242) authorized counties or the state to refer to FTB for collection court-ordered debts under a pilot program beginning January 1, 1995, and expiring January 1, 1999. The act provided for the transfer from FTB's collections to the General Fund an amount equal to FTB's costs to administer the collection program. The permitted costs were capped at 9% of collections through fiscal year 1996/97 and 5% of collections for fiscal years 1997/98 and 1998/99.

SB 580 (Stats. 1996, Ch. 705) was enacted to implement a collection program for restitution orders due victims. The Department of Corrections is authorized to contract with a private collection agency or FTB for collection of these orders from parolees. The act required the Department of Corrections to develop an implementation plan to collect victim restitution orders on behalf of the victim from parolees.

SB 1106 (Stats. 1997, Ch. 604) extended the court-ordered debt pilot period for three years and increased the program's cost cap to 15%. The act also allowed the state or counties to refer to FTB for collection court-ordered amounts that are associated with court-ordered fines, penalties, forfeitures or restitution orders. Restitution orders due a victim were allowed to be referred to FTB for collection under certain specified conditions. Distribution procedures for the countries were clarified.

SPECIFIC FINDINGS

Automated Offset System

Under the Government Code, the Controller has the authority to offset any debts a person or entity owes the state or owes a city or county (including bench

warrants and other court-ordered amounts) against any amounts that the state owes the person or entity.

The Controller, in conjunction with FTB, developed an automated offset system. FTB administers and operates this automated offset system that intercepts income tax refunds and lottery winnings. The governmental agency responsible for the collection of the debt submits a list of accounts to FTB for interception. Disputes regarding amounts intercepted are resolved by the referring agency, not FTB.

In the event a person or entity owes multiple debts, the law generally prioritizes debts subject to offset as follows:

- Child and family support, including that support owed the state;
- Certain overpaid unemployment benefits; and
- Other debts in the priority determined by the Controller, which is as follows:
 1. All other state debts, with the greatest liability having first priority;
 2. Certain county/city debts;
 3. Certain debts of community colleges and educational institutions; and
 4. Internal Revenue Service.

Court-Ordered Debt Collections

Under current law (a pilot program that began January 1, 1995, and is due to expire January 1, 2002), counties or the state are allowed to refer court-ordered debts to FTB for collection. Under this system, FTB and county superior, municipal and justice courts have formed partnerships to collect court-ordered debts. FTB collects for courts certain criminal fines, state or local penalties, forfeitures, restitution fines, restitution orders, court-ordered fees, assessments, most Vehicle Code violations and other amounts that are due a county or the state. The debts must be at least 90 days delinquent and at least \$250 in the aggregate to be referred to FTB.

If the debtors do not pay their debt, the court issues a series of delinquent notices and if necessary pursues other collection actions. FTB's collection process begins when a court refers cases to FTB. After providing written notice to the debtors, FTB collects the delinquent cases as though they are final delinquent income tax debts.

FTB has collected approximately \$17.5 million in court-ordered debts since the program began.

Currently, 16 county clients and one state client, the Board of Control (BOC), are participating in court-ordered debt collections. These clients represent approximately 98 courts. Currently seven counties are waiting to participate. The current court-ordered debt inventory is approximately 250,000 cases. Department staff expects case volumes to increase to 500,000 by the end of fiscal year 1999-2000. In fact, the BOC anticipates that it will have volumes of 150,000 to 700,000 annually. However, unique system requirements of each county/court and the capacity of FTB's current system have prevented expansion of the court-ordered debt program. FTB staff is continuing to work with the counties/courts and state agencies to overcome the obstacles to gaining full participation.

SB 1310

As proposed to be amended, this bill would create the Outstanding Warrant Reduction Act to reduce the number of arrest warrants for persons wanted for commissions of crimes in California.

This bill would appropriate \$10 million to help district attorneys and local peace officers locate, apprehend, prosecute and incarcerate persons for whom felony warrants have been issued.

In addition, this bill would create an amnesty program to encourage persons who, as of July 1, 1999, have infraction and certain misdemeanor warrants that do not require an appearance and that can be cleared by payment of amounts owed, to pay such amounts. Once amounts due are paid, the warrant would be recalled and penalties resulting from delinquency of payment or issuance of the warrant would be waived. Special rules are provided for undue hardship and installment payments. The amnesty period would be from January 1, 2000, until June 30, 2001.

If the person fails to pay during the amnesty period, **this bill** would allow state agencies and the courts to refuse to issue various state-issued licenses, as well as attach the person's earnings, intercept state refunds, and intercept lottery winnings as allowed under current law.

This bill would change the priority of debts for purposes of attaching a person's earnings. Specifically, the debt would have the same priority over any other attachment, execution or other assignment as specified for child support assignment orders, with assignment orders for child support receiving priority. Thus, the priority would change to child support levies, court-ordered debt levies, tax levies and all other levies, raising the priority for court-ordered debt levies above the priority for tax levies.

This bill would modify court-ordered debt collection referrals to allow all counties or courts and the state to refer amounts remaining after the amnesty period to FTB for collection. Such debts would not be subject to the \$250 minimum required under current law. FTB would not be required to provide the debtor notice prior to levy, and even if the debt were paid within 15 days of notice, interest accruing from the date of notice would not be waived. Current law would provide that the department's costs to administer the program would be reimbursed from the amounts collected, limited to 15% of collections.

This bill would require the Department of Justice (DOJ), no later than June 1, 2000, to notify every defendant who as of July 1, 1999, has a warrant for an infraction or a misdemeanor that would qualify for the amnesty program. The bill also would state legislative intent that the DOJ conduct a public awareness program to accomplish the purpose of the Act. The DOJ would be appropriated \$600,000 for this program.

Policy Considerations

This bill would raise the following policy considerations.

- Under current law, the priority for levies is child support levies, tax levies, then all other levies in the order issued. This bill would

change the priority by moving court-ordered levies above tax levies.

Since court-ordered debts referred to FTB for collection are collected as tax debts, the priority change would place court-ordered debts referred to FTB for collection below those that the counties/courts issued earnings assignment orders on. This could encourage counties/courts to refer debts to FTB, then pull the case back once FTB has identified the debtor's employer. In such cases, FTB would not receive reimbursement for its work in identifying employers.

- Current law requires FTB to notify debtors before collection action begins in court-ordered debt collections. Approximately 20% of court-ordered collections result from this notice (demand notice), making it the most cost-effective method. Such notification would not be required under this bill.

Further, removal of notification requirements could be viewed as an infringement on the debtor's rights. In fact, additional notification requirements were recently added to federal income tax law by the Internal Revenue Service Restructuring and Reform Act of 1998, which was generally conformed to by SB 685 (Stats. 1999, Ch. 348).

Implementation Considerations

Department staff is working with the author to resolve the following considerations.

- The department does not currently have sufficient automated systems capacity for court-ordered debt collections to service all California counties/courts. (This is a problem irrespective of this bill.) Development of a long-term system solution would be necessary to ensure the continued ability to collect all the debts referred.
- Based on the history of court-ordered debt collections, an increase in the cost cap (currently 15%) may be necessary to operate in a cost-effective manner.
- It is unclear how accounts currently referred to the automated offset system and court-ordered debts already referred to FTB for collection would be treated during the amnesty period.

Technical Considerations

Based on the author's expressed intent, department staff believes that amending the existing code sections regarding the automated offset system and court-ordered debt collections, rather than adding new code sections, would be more appropriate. In addition, the repeal date of the current court-ordered debt collection provisions should be extended since they would be repealed on January 1, 2002, six months after the amnesty period proposed by this bill would end. Department staff is working with the author to resolve these concerns.

LEGISLATIVELY MANDATED REPORTS

The DOJ, in cooperation with state and local agencies, would be required to provide an interim report on or before December 31, 2002, and a final report on or before March 31, 2005, to the Governor and the Legislature on the effectiveness of the Outstanding Warrant Reduction Act.

FISCAL IMPACT

Departmental Costs

The department's costs to administer this bill cannot be determined until further analysis is conducted to determine the resources needed for the long-term system changes/improvements.

Tax Revenue Estimate

Since the author is refining the goals of this bill, a tax revenue estimate will not be provided at this time.

BOARD POSITION

Pending.